Public Prosecutor v Uthaya Kumar a/l Ponnusamy

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO B–09–14 OF 2003
GOPAL SRI RAM, RICHARD MALANJUM AND NIK HASHIM JJCA
18 APRIL 2005

Criminal Law — Criminal intimidation — Whether mens rea required to be stated in charge — Penal Code s 506

Criminal Procedure — Acquittal or discharge — Disharge of accused — Discharge not amounting to acquittal — Whether order justified — Whether charge heard and dealt in earlier proceedings — Penal Code s 506

This was an appeal by the Public Prosecutor against an order made by Suriyadi J in the Shah Alam High Court when acting in his revisionary jurisdiction. The learned judge made an order discharging the respondent in respect of a charge brought before him under s 506 of the Penal Code.

Held, dismissing the appeal:

(1) In essence, when the judgment of the learned judge was read as a whole, it would seem to require the prosecution to specify the mens rea of the charge. On a proper construction of s 506 of the Penal Code, no mens rea was required to be stated in the charge. The court disagreed with the learned judge when ordering the discharge on this ground (see para 5).

(2) However, having perused the records, the court was satisfied that there were other grounds to justify the order. The magistrate who was involved in the proceedings involving the charge under s 228 of the Penal Code also proceeded to hear and deal with the charge under s 506 of the Penal Code in respect of the respondent's bail application. The decision of the learned judge was affirmed on different grounds (see para 8).

[**Bahasa Malaysia translation**

Ini merupakan satu rayuan dari Pendakwa Raya terhadap satu perintah yang dibuat oleh Suriyadi H di Mahkamah Tinggi Shah Alam semasa beliau bertindak di bawah bidang kuasa penyemakannya. Yang arif hakim telah membuat satu perintah yang melepaskan responden dari satu pertuduhan yang dihadapkan ke hadapannya di bawah s 506 Kanun Keseksaan.

Diputuskan, menolak rayuan:

(1) Pada dasarnya, apabila penghakiman yang arif hakim dibaca secara keseluruhan, ia tampak memerlukan Pendakwa Raya untuk menyatakan secara khusus *mens rea* pertuduhan tersebut. Pada tafsiran s 506 Kanun

Keseksaan yang sebetulnya, tiada *mens rea* perlu dinyatakan pada pertuduhan. Mahkamah tidak bersetuju dengan yang arif hakim apabila memerintahkan pelepasan berdasarkan alasan ini (lihat perenggan 5).

(2) Namun begitu, setelah meneliti rekod-rekod, mahkamah berpuashati yang bahawa terdapat alasan-alasan lain untuk memberi justifikasi kepada perintah tersebut. Majistret yang terlibat di dalam prosiding berhubung dengan pertuduhan tersebut di bawah s 228 Kanun Keseksaan juga terus mendengar dan membicarakan pertuduhan tersebut di bawah s 506 Kanun Keseksaan berhubung dengan permohonan jaminan responden. Keputusan yang arif hakim disahkan di atas alasan-alasan yang berbeza (lihat perenggan 8).

Notes

For cases on discharge of accused, see 5(1) *Mallal's Digest* (4th Ed, 2004 Reissue) paras 86–91.

For cases on s 506 Penal Code, see 4 *Mallal's Digest* (4th Ed, 2003 Reissue) paras 1894–1896.

Legislation referred to

Penal Code s 506

Appeal from: Semakan Jenayah Selangor No 43–1 of 2003 (High Court, Shah Alam)

Mohd Hanafiah bin Zakaria (Deputy Public Prosecutor) (Attorney-General's Chambers) for the appellant.

M Manoharan (PW Moorthy, VK Sharma, WK Chan and S Kulasegaran with him) (M Manoharan & Co) for the respondent.

Edmund Bon (Kuala Lumpur Bar Committee) and Amer Hamzah Arshad (Bar Council Malaysia) holding watching brief.

Gopal Sri Ram JCA (delivering judgment of the court):

[1] This is the judgment of the court in relation to the appeal by the Public Prosecutor against an order made by Suriyadi J in the Shah Alam High Court when acting in his revisionary jurisdiction. The learned judge made an order discharging the respondent before us in respect of a charge brought before him under the s 506 of the Penal Code.

[2] The charge in question is as follows:

Bahawa kamu, pada 3 September 2002, jam lebih kurang 4.15ptg, bertempat diMahkamah Majistret Sepang, di dalam daerah Sepang di Negeri Selangor Darul Ehsan, telah menakutkan secara jenayah terhadap Ponaiya a/l Ganasan, secara mengugut dengan perkataan, 'You watch out, I will fix you, we fix you', maka kamu

dengan ini telah melakukan suatu kesalahan yang boleh dihukum di bawah s 506 Kanun Keseksaan.

(Translated version:

That you on 3 September 2002 in and about 4.15pm at the Sepang magistrate court, in the district of Sepang, Selangor Darul Ehsan, had criminally intimidated Poniaya a/l Ganasan, by the threatening words 'You watch out, I will fix you, wefix you', and thus had committed an offence punishable under s 506 of the Penal Code.)

[3] In making his order the learned judge gave the following reasons:

I now touch on the next poser. The charge had stated that Mr Uthayakumar had uttered the intimidating words 'You watch out, I will fix you, we fix you', with the applicant profusely denying uttering them. The learned deputy public prosecutor had vehemently stressed that no court would have been able to conclude that the charges were groundless when the facts were yet adduced. Unlike the laborious days when preliminary enquiries existed, and courts would have been able to come to some conclusion based on the recorded testimonies, the current predicament was certainly of no help to the magistrate. Much as I agree in part with his argument, I was certainly not denied of some other facts before me, in particular the ingredients packed in the other charges. Without the necessity of repeating the above charges, in particular the second and/or the alternative charges, the incidents of insulting and distracting (s 228) had taken place during the hours of 4.15pm which was smack in the middle of the judicial proceedings. The supposed intimidating words, as per the s 506 charge, likewise had occurred at about the same time the altercation was taking place. Yet a scrutiny of the notes of proceedings of 3 September 2002 failed to reveal any utterances of that nature, at that time or place, the opportunity, or for that matter comments by the court. The notes of proceedings were more than sufficient to rebut the first charge. In other words, even at that early stage, prior to the commencement, let alone the closing of the prosecution's case, the charge was apparent to all and sundry that it was groundless.

[4] This morning, the learned deputy public prosecutor has complained that the foregoing reasons of the learned judge do not represent the law governing s 506 of the Penal Code. In other words, the charge was not groundless.

[5] We are in agreement with the submission of the learned deputy. In essence, when the judgment of the learned judge is read as a whole, it would seem to require the prosecution to specify the mens rea of the charge. If that is the meaning of what the learned judge meant to convey, we must enter our vigorous dissent to this. It is settled law that the ingredients needed to be specified in a charge depends on the way dictated by statute. On a proper construction of s 506 of the Penal Code, we are satisfied that no mens rea is required to be stated in the charge. We do not agree with the learned judge when ordering the discharge on this ground.

[6] But that is not the end of the matter. Having perused the records most anxiously, we are satisfied that there are other grounds to justify the order.

Wedo not propose to go into these grounds as it may affect any subsequent proceedings which may follow. Suffice to say, the learned magistrate before whom the charge under s 506 was ventilated, has already dealt with a charge under s 228 of the Penal Code which reads as follows:

> Bahawa kamu, pada 3 September 2002, jam lebih kurang 4.15ptg, bertempat diMahkamah Majistret Sepang, di dalam daerah Sepang di Negeri Selangor Darul Ehsan, telah dengan sengaja memberi aib kepada Majistret Norazmi bin Mohd Narawi semasa prosiding siasatan kematian Tharmarajen a/l Subramaniam apabila majistret tersebut telah mengarah kamu untuk diam dan jika enggan kamu boleh diarahkan keluar dari mahkamah tetapi sebaliknya kamu memberitahu majistret tersebut, kamu tidak mahu keluar daripada mahkamah dan akan terus bercakap dan dengan ini kamu telah melakukan suatu kesalahan yang boleh dihukum, maka kamu dengan ini telah melakukan suatu kesalahan yang boleh dihukum di bawah s228 Kanun Keseksaan.
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> (Translated Version:
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> That you on 3 September 2002 in and about 4.15pm at the Sepang magistrate court, in the district of Sepang, Selangor Darul Ehsan, had intentionally insulted the magistret Norazmi bin Mohd Narawi during the inquest of Thatmarajen a/l Subramaniam, when the said magistrate had ordered you to be quiet, in defiance of which you would be ordered to leave the court, has refused and informed that magistrate of your desire to carry on talking, and thus had committed an offence under s 228 of the Penal Code.)
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> Pertuduhan alternatif kepada pertuduhan kedua:
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> Bahawa kamu, pada 3 September 2002, jam lebih kurang 4.15 ptg, bertempat dimahkamah majistret Sepang, di dalam daerah Sepang di Negeri Selangor Darul Ehsan, telah dengan sengaja mengganggu majistret Norazmi bin Mohd Narawi semasa presiding siasatan kematian Tharmarajen a/l Subramaniam apabila majistret mengarah kamu untuk diam dan jika enggan kamu boleh diarahkan keluar dari Mahkamah tetapi sebaliknya kamu memberitahu majistret tersebut, kamu tidak mahu keluar daripada mahkamah dan akan terus bercakap sehingga menyebabkan majistret menangguhkan presiding siasatan kematian tersebut dan dengan ini kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah s 228 Kanun Keseksaan.
>
> (Translated Version:
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> That you on 3 September 2002 in and about 4.15pm at the Sepang magistrate court, in the district of Sepang, Selangor Darul Ehsan, had intentionally distracted the magistrate Norazmi bin Mohd Narawi during the inquest of Thatmarajen a/l Subramaniam, when the said magistrate had ordered you to be quiet, in defiance of which you would be ordered to leave the court, has refused and informed that magistrate of your desire to carry on talking, resulting in the inquest proceedings being adjourned, and thus had committed an offence under s 228 of the Penal Code.)

[7] The magistrate who was involved in the proceedings involving the charge under s 228 of the Penal Code also proceeded to hear and deal with

A the charge under s 506 of the Penal Code in respect of the respondent's bail application. That, in our view, was an unsatisfactory state of affairs. Suffice for record, the respondent did apologise to the magistrate. That should be the end of matter insofar the charge under s 228 of the Penal Code is concerned which is now not being pursued before us.

B **[8]** In the circumstances of this case the appeal is hereby dismissed. Weagree that there should be a discharge not amounting to an acquittal. No further order is appropriate. We affirm the decision of the learned judge but on different grounds.

C *Appeal dismissed.*

Reported by Peter Ling

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